

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERKS OFFICE

2005 MAR 11 P 12:55

CAPCO STEEL CORPORATION

U.S. DISTRICT COURT
DISTRICT OF MASS

v.

C.A. No.:

05-10473 PBS

CLARK/HUBER, HUNT &
NICHOLS/BERRY, A JOINT VENTURE
and NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA and FEDERAL
INSURANCE COMPANY and FIDELITY
AND DEPOSIT COMPANY OF
MARYLAND and ZURICH AMERICAN
INSURANCE COMPANY and UNITED
STATES FIDELITY AND GUARANTY
INSURANCE COMPANY and ST. PAUL
FIRE AND MARINE INSURANCE
COMPANY

RECEIPT # 14691
AMOUNT \$ 750.00
SUMMONS ISSUED 3
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 3/11/2005

COMPLAINT

MAGISTRATE JUDGE JLA

JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1332. This court has original jurisdiction over the above captioned action because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

Preamble

1. Plaintiff, Capco Steel Corporation ("Capco") is a Rhode Island corporation authorized to do business in the Commonwealth of Massachusetts and having as its principal address 33 Acorn Street, Providence, Rhode Island.
2. Upon information and belief, defendant, Clark/Huber, Hunt & Nichols/Berry, A Joint Venture ("CHB"), is an entity, having a usual place of business located at 420 D Street,

Boston, Massachusetts, licensed to do business in the Commonwealth of Massachusetts.

3. Defendant, National Union Fire Insurance Company of Pittsburgh, PA (“National Union”), is a bonding/surety company licensed to do business in the Commonwealth of Massachusetts.
4. Defendant, Federal Insurance Company (“Federal”), is a bonding/surety company licensed to do business in the Commonwealth of Massachusetts.
5. Defendant, Fidelity and Deposit Company of Maryland (“Fidelity”), is a bonding/surety company licensed to do business in the Commonwealth of Massachusetts.
6. Defendant, Zurich American Insurance Company (“Zurich”), is a bonding/surety company licensed to do business in the Commonwealth of Massachusetts.
7. Defendant, United States Fidelity and Guaranty Insurance Company (“USF&G”), is a bonding/surety company licensed to do business in the Commonwealth of Massachusetts.
8. Defendant, St. Paul Fire and Marine Insurance Company (“St. Paul”), is a bonding/surety company licensed to do business in the Commonwealth of Massachusetts.

COUNT I

9. Plaintiff entered into a subcontract with defendant CHB, dated January 22, 2003, to supply labor and materials for a project known as the Boston Convention and Exhibition Center in Boston, Massachusetts (“the “Project”).
10. CHB had an agreement with the owner of the project, The Massachusetts Convention Center Authority (“Owner”), for construction of the project.
11. CHB agreed to pay Capco for the labor and materials provided to the project, and, to date, Capco is owed the sum of \$242,250 for contract balance, retainage, change orders and extra work.

12. Capco complied with the subcontract agreement providing labor and materials in a timely and workmanlike manner without fault or defect in accordance with the plans and specifications for the project.
13. Despite repeated demands, CHB refuses, or is unable, to pay Capco for the labor and materials in accordance with the agreement.

WHEREFORE, plaintiff, Capco Steel Corporation, demands that judgment be entered in its favor and against defendant, Clark/Huber, Hunt & Nichols/Berry A Joint Venture, in the amount of \$242,250, plus interest, costs of this action, and attorney's fees.

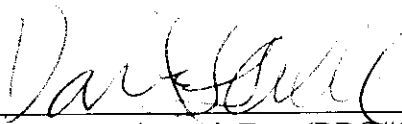
COUNT II

14. Plaintiff hereby incorporates and alleges paragraphs 1 through 13 as if fully set forth herein.
15. Defendants, National Union, Federal, Fidelity, Zurich, USF&G and St. Paul ("surety defendants"), acting as co-sureties, issued to CHB, as principal, a payment bond in the principal amount of \$225,804,518.50 in favor of the Massachusetts Convention Center Authority as obligee on the subject project. A true and correct copy of said payment bond is attached hereto as **Exhibit A**.
16. Under the terms of said payment bond, the surety defendants are obligated to pay Capco for the labor and materials provided to CHB for the completion of Capco's subcontract with CHB in the event CHB is either unable or unwilling to pay Capco.
17. Despite demand, all surety defendants have failed and refused to make payment to Capco for the amount due and owing.

WHEREFORE, plaintiff, Capco Steel Corporation, demands that judgment be entered in its favor and against defendants, National Union Fire Insurance Company of Pittsburgh, PA, Federal

Insurance Company, Fidelity and Deposit Company of Maryland, Zurich American Insurance Company, United States Fidelity and Guaranty Insurance Company and St. Paul Fire and Marine Insurance Company, in the amount of \$242,250, plus interest, costs of this action, and attorney's fees.

Plaintiff,
Capco Steel Corporation
By its Attorneys,


Girard R. Visconti, Esq. (BBO#510200)
David M. Campbell, Esq. (BBO#645512)
Visconti & Boren , Ltd.
55 Dorrance Street
Providence, RI 02903
401-331-3800 (Tel.)
401-421-9302 (Fax)

Dated: 10 MAR, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
CLERK'S OFFICE

1. Title of case (name of first party on each side only) Capco Steel Corporation v. Clark/Huber, Hunt & Nichols/Berry, A Joint Venture et als.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright case.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David M. Campbell (BBO#645512)

ADDRESS Visconti & Boren, Ltd., 55 Dorrance St., Providence, RI 02903

TELEPHONE NO. (401) 331-3800

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Capco Steel Corporation

(b) County of Residence of First Listed Plaintiff Providence
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) (401) 331-3800
David M. Campbell, Visconti & Boren, Ltd.
55 Dorrance St., Providence, RI 02903

DEFENDANTS

Clark/Huber, Hunt & Nichols/Per 55, A Joint
Venture, et als
County of Residence of First Listed Defendant Suffolk, MA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (Firm Name)

05 cv 10473 PBS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause: Claim for payment for labor and material provided to the Boston Convention and Exhibition Center in Boston, Massachusetts

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
 UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE Mar 10 2005 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____